him insolvent or declaring him bankrupt. *Held*, the court has no jurisdiction to administer the estate of the alleged secret partner. *Re Samuels, Appeal of Valentine* (C. C. A.), 215 Fed. 845. See NOTES, p. 295.

CARRIERS—DUTY TO PASSENGERS—DUTY WHERE CARRIAGE IS ILLEGAL—PERSONS RIDING ON TRAINS NOT INTENDED FOR PASSENGERS.—The deceased was killed while traveling on a logging train, in unconscious, though actual, violation of the law, but with the knowledge and consent of the conductor. By a rule of the company, all persons riding on such trains were required to release the carrier from liability for injuries from any cause received while so traveling. But the deceased had no ticket and had signed no release. His death was caused by the improper loading of one of the lumber cars. *Held*, the railroad is not liable for his death. *Van Auken* v. *Michigan Cent. R. Co.* (Mich.), 148 N. W. 819.

The decision, by a divided court, is based on the ground that the deceased was not a passenger, because he had paid no fare. The overwhelming weight of authority holds that under such circumstances, even though the carrying was penalized by law, both as to carrier and passenger, these facts do not make the person so carried a trespasser or a licensee, or in any way lessen the high degree of care owed him by the carrier. *So. Pac. R. Co.* v. *Schuyler*, 227 U. S. 601, 43 L. R. A. (N. S.) 901; *Gabbert* v. *Hackett*, 135 Wis. 86, 115 N. W. 345, 14 L. R. A. (N. S.) 1070; *McNeill* v. *Durham, etc., R. Co.*, 135 N. C. 682, 47 S. E. 765, 67 L. R. A. 227.

The basis of this duty to carry safely is found in the public policy of the State; since all persons riding on trains with the carrier's consent are human beings, for whose safety it has assumed responsibility. *Railroad Co.* v. *Schuyler, supra.* Persons riding without that consent are mere licensees or trespassers, and such persons can only demand of right that they shall not be wilfully injured. *Dodge* v. *Chi., etc., R. Co.* (Iowa), 146 N. W. 14; *Evarts* v. *St. Paul M. & M. Ry. Co.*, 56 Minn. 141, 57 N. W. 459, 22 L. R. A. 663, 45 Am. St. Rep. 460.

The question as to what amounts to consent on the part of a carrier is confused. Persons riding on a train not intended, and not generally used, for the carriage of passengers, must, by the majority view, prove the power of the person accepting them as passengers to bind the carrier by such acceptance. *Vassor* v. *Atl. Coast L. R. Co.*, 142 N. C. 68, 54 S. E. 849, 7 L. R. A. (N. S.) 950; *St. Louis, etc., R. Co.* v. *Jones*, 96 Ark. 558, 132 S. W. 636, 37 L. R. A. (N. S.) 418. But if such trains, though not primarily intended for passengers are used by the company for the purpose, then the conductor has the same power to accept passengers which a conductor on a passenger train possesses. *Simmons* v. *Oregon R. & M. Co.*, 41 Ore. 151, 69 Pac. 1022; *Spence* v. *Chi. R. I. & P. Ry. Co.*, 117 Ia. 1, 90 N. W. 346.

A passenger on a mixed train assumes the risks reasonably incident to travel thereon, but the carrier assumes as to him the same high degree of care to protect him from injury as if he were on a passenger train, subject to the necessary difference in their operation. *St. Louis, etc., R. Co.* v. *Overton* (Ark.), 169 S. W. 364.

It is suggested in the principal case that the conductor on a logging train is a mere special agent of the company, and that on this account notice is presumed of any restrictions imposed upon his right to represent the carrier. It follows that he is incapable of waiving conditions imposed upon the granting of passage upon his train, and there is authority for this view in the analogous case of freight trains. *Neice* v. *Chi. & A. R. Co.*, 254 Ill. 595, 98 N. E. 989; *Eaton* v. *Del., etc., R. Co.*, 57 N. Y. 382, 15 Am. Rep. 513. But if the trains ordinarily carry passengers the rule is otherwise. *Wagner* v. *Mo., etc., R. Co.*, 97 Mo. 512, 10 S. W. 486, 3 L. R. A. 156; *Harvey* v. *Deep River Logging Co.*, 49 Ore. 583, 90 Pac. 501, 12 L. R. A. (N. S.) 131. When such is the case the restrictions are in the nature of secret limitations upon a general agent and are unenforceable by the general laws of agency, as to persons who deal with that agent in ignorance of them. *Brown* v. *Kansas City, etc., R. Co.*, 38 Kan. 634, 16 Pac. 942; *Spence* v. *Chi. R. I. & P. Ry. Co.*, *supra.*

A carrier may in some States provide for a waiver of its common law liability for the negligence of its servants, by persons riding on trains not intended for passengers, and such waiver is valid. *Arnold* v. *Ill. C. Ry. Co.*, 83 Ill. 273, 25 Am. Rep. 383. This would seem sound on principle, but the weight of authority seems the other way. Since no duty rests upon a railroad to carry passengers upon trains not intended for passenger service, it would seem that they should be allowed to impose any reasonable conditions precedent to the right to become a passenger, such as a limitation of liability for accident. *Arnold* v. *Ill. C. Ry. Co., supra; contra, Cent. of Ga. Ry. Co.* v. *Lipmann*, 110 Ga. 665, 36 S. E. 202, 50 L. R. A. 673; *Sullivan-Sandford Lumber Co.* v. *Watson* (Tex. Civ. App.), 135 S. W. 635.

It is held in Michigan that the ordinary rule applicable to common carriers of passengers do not apply to logging roads. *Ingersoll* v. *D. & M. R. Co.*, 168 Mich. 380, 134 N. W. 441. And this would tend to support the decision in the principal case.

It is also suggested in the main decision that since the car whose faulty loading caused the death of the deceased was loaded by his fellow employees, the doctrine of fellow servant might bar a recovery. But it is the duty of the railroad to inspect cars offered to it for transportation. See *Van Auken* v. *Mich., etc., R. Co., supra.* Hence the negligence of the railroad company in accepting the car was the proximate cause of the injury, and the prior negligence of the loaders becomes immaterial. *Burnham* v. *St. Louis, etc., R. Co.*, 56 Mo. 338. See also, *Milwaukee, etc., R. Co.* v. *Kellogg*, 94 U. S. 469.

CARRIERS — RATES — DISCRIMINATION — MEASURE OF DAMAGES.—A statute prohibited discrimination by a common carrier and further made the carrier liable in damages to any person injured by a violation of the statute. The plaintiff paid the lawful rate, while another shipper was given an unlawful rebate. In an action against the carrier to recover under the statute, the plaintiff claimed a like rebate on his own ship-